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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

STEPHEN W. COHEN, Plaintiff and Appellant, v. LIFE INSURANCE COMPANY OF THE SOUTHWEST et al., Defendants and Respondents.	A140803 (Sonoma County Super. Ct. No. SCV 253529)

Plaintiff Stephen Cohen filed suit against defendants Life Insurance Company of the Southwest (LSW) and Employee Benefits Services & Advisors, Inc. (EBS), asserting claims for breach of contract and related statutory and tort claims. The trial court granted a motion by LSW to dismiss on the ground of inconvenient forum (Code Civ. Proc., §§ 410.30, 418.10, subd. (a)(2)),[1] based on a forum selection clause in the governing contract between Cohen and LSW specifying that actions between the parties must be brought in Texas and will be governed by Texas law. In light of this ruling, the court ruled that a request by Cohen for trial preference (§ 36, subd. (a)) was moot. The court

[1] All undesignated statutory references are to the Code of Civil Procedure. Section 410.30 states in part: "(a) When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." Section 418.10 states in part: "(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: [¶] . . .[¶] (2) To stay or dismiss the action on the ground of inconvenient forum. . . ."

later dismissed the action as to EBS as well, concluding the claims against both defendants should be heard in the same forum.

On appeal, Cohen argues the court should not have enforced the Texas forum selection clause because (1) it is contained in an illusory and unconscionable contract, (2) California is a more convenient forum, and (3) some of his statutory claims reflect California public policies that will not be protected if the case is heard in Texas. Cohen also argues the court should have granted his motion for trial preference due to his age and poor health. We affirm the court's orders.

I. BACKGROUND

A. The Contract Between Cohen and LSW

LSW is a Texas corporation with its principal place of business in Addison, Texas. LSW sells a variety of retirement-related annuities and life insurance products. LSW is licensed to do business in 49 states (including Texas and California) and in the District of Columbia. In support of its motion to dismiss, LSW submitted evidence that it contracts with Marketing Organizations (MOs) to act as LSW's agents and solicit business for LSW in different jurisdictions across the United States. An MO can be a single individual.

LSW's contracts with MOs, frequently referred to as "Marketing Organization Agreements," typically include forum selection clauses requiring that all claims against LSW be brought and litigated in Texas. According to a declaration submitted in support of its motion to dismiss, LSW includes this forum selection clause in its Marketing Organization Agreements in part to protect itself from having to litigate in multiple forums under different state laws.

Cohen lives in Santa Rosa, California. He is an insurance agent licensed in California and in Texas, although he states he has never sold an insurance policy in Texas. Beginning in 1980, Cohen sold insurance and annuity products for LSW, as well as for other insurers. Cohen does business under the name Steve Cohen Financial Marketing.

On October 27, 1998, Cohen and LSW entered into a contract entitled "Marketing Organization (MO) Agreement" (the MOA or the agreement). The main body of the MOA is five pages long, and it attaches applicable commission schedules. The MOA states that LSW appoints Cohen as a Marketing Organization (MO). The agreement (in section 2.2) authorizes Cohen to "solicit applications for individual life, annuity and accident and health policies on forms then being issued or offered by [LSW] . . . both personally and through agents appointed and assigned by [LSW] to [Cohen] from time to time." The agreement (in section 2.3) also authorizes Cohen, as a Marketing Organization, to "recruit and recommend the appointment by [LSW] of agents." The agreement states, however, that LSW "shall not be obligated to appoint any agent or to assign any agent to [Cohen]; and [LSW] expressly reserves the exclusive right and sole discretion to assign and to terminate the assignment of any agent at any time." The agreement specifies (in section 1.2) that it does not grant any exclusive territory to Cohen, nor does it "impose upon [Cohen] any territorial limit of operation . . . ." The agreement provides that either party may terminate the agreement without cause on 30 days' notice.

Section 4.1 of the agreement states Cohen's compensation is to be determined in accordance with the commission schedules attached to the agreement. That provision states LSW reserves the right to modify the commission schedules; any modification "shall have no effect on compensation resulting from policies with both an effective date and an application date prior to the effective date" of the modification. Consistent with this reservation of LSW's right to modify the commission schedules, section 6.1 of the agreement states in part: "No modification of any provision of this Agreement, except modifications of the Schedules of Compensation, shall be effective unless endorsed in a writing signed by [Cohen] and the President or a Vice President of [LSW]."

The agreement specifies (in section 1.3) that it is not a contract of employment and does not create an employer-employee relationship between LSW and Cohen; the agreement states that Cohen, as an MO, is not obligated to represent LSW exclusively and has discretion in fulfilling his obligations under the agreement. Section 1.3 states:

"This Agreement is not a contract of employment and does not create the relationship of employer and employee between the Company and MO. MO is not expected or obliged to devote full time and effort to the business of the Company or to represent the Company exclusively. It is understood and agreed that this Agreement calls for results and does not purport to control the time or manner of performance of MO. Rather, MO is an independent contractor and shall exercise his own judgment and discretion in the conduct of the business contemplated under this Agreement . . . ."

Section 6.6 of the agreement is the forum selection clause. That provision states: "This Agreement is made and performable in Dallas, Dallas County, Texas. The parties agree that any action at law or in equity hereunder shall be brought in Dallas County, Texas and that the laws of the State of Texas shall govern any dispute arising hereunder."

B. Cohen's Complaint

On April 16, 2013, Cohen filed suit in Sonoma County Superior Court against LSW and EBS. In his verified complaint, Cohen alleges that, first in 2001 and again in 2008–2009, LSW began to reassign insurance agency contracts from Cohen to others (apparently to other MOs, other "regional vice presidents," or other "persons within LSW"), reducing the amount of commission income Cohen received. Cohen alleges LSW reassigned some of this business to EBS. Cohen states that, on or about January 1, 2013, LSW "ceased paying [Cohen] commission override payments on EBS sales."

In the complaint, Cohen alleges that, although the parties' contract states he is not LSW's employee, LSW in fact treated him as an employee. Cohen also alleges in the complaint that the parties' contract is illusory because it gives LSW discretion to assign and to terminate the assignment of an agent to Cohen, and because it permits LSW to modify the commission schedules.

As to LSW, the complaint asserts causes of action for (1) breach of contract (i.e., the MOA), (2) breach of the implied covenant of good faith and fair dealing, (3) willful failure to pay commissions owed to an employee in violation of Labor Code section 2751 (based on the allegation Cohen is an LSW employee), (4) willful failure to pay commissions owed to an independent contractor in violation of Civil Code

section 1738.15 (alleged in the alternative, in the event Cohen is determined not to be an LSW employee), and (5) age discrimination in violation of Government Code section 12940, based on the allegation that Cohen is an LSW employee and LSW reassigned insurance agency contracts from Cohen to younger MOs. As to EBS, the complaint alleges causes of action for intentional interference with contractual relations and intentional interference with prospective economic relations, based on EBS's alleged inducement of LSW to reassign business from Cohen to EBS. Finally, the complaint asserts a cause of action for accounting against both defendants. Cohen seeks compensatory and punitive damages and attorney fees.

C. The Parties' Motions

In a case management statement filed on July 29, 2013, LSW stated it intended to seek dismissal of the action based on the Texas forum selection clause in the parties' agreement. In his case management statement filed on July 31, 2013, Cohen stated he opposed enforcement of the forum selection clause; he also stated his case was entitled to trial-setting preference under section 36, subdivision (a).

On August 5, 2013, Cohen filed a motion for trial-setting preference based on his age and health pursuant to section 36, subdivision (a).[2] In a declaration submitted in support of the motion, Cohen stated he would be 74 years old in August 2013 and had a substantial interest in the case. As to his health, Cohen stated he had quadruple coronary bypass surgery in 1994 and subsequently had a stent inserted in one of his coronary arteries. Cohen stated he becomes short of breath upon moderate exertion and carries nitroglycerin with him for emergency use. Cohen stated he continues to work full time,

[2] Section 36 provides in part: "(a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings: [¶] (1) The party has a substantial interest in the action as a whole. [¶] (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation. [¶] . . . [¶] (f) Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date . . . ."

eight hours per day, five days per week, although he limits his business travel to day trips.

On August 7, 2013, LSW filed its motion to dismiss or stay the action on the ground of inconvenient forum, relying on the forum selection clause in the parties' agreement. Also on August 7, 2013, EBS filed a demurrer, asserting Cohen's complaint failed to state a cause of action against EBS.

Cohen opposed LSW's motion and EBS's demurrer. In his memorandum in opposition to LSW's motion (filed on August 28, 2013), Cohen argued the court should not enforce the Texas forum selection clause because (1) Cohen's health did not permit him to travel to Texas to prosecute the case, and (2) California public policies underlying his two alternative statutory claims for failure to pay commissions "will not be protected in Texas." In an accompanying declaration, Cohen again referred to his 1994 quadruple coronary bypass surgery, and he stated that, in subsequent procedures (in 2006 and 2011), he had stents inserted in two different coronary arteries. An attached letter from Cohen's physician states that traveling long distances would place significant stress on his body. Finally, Cohen stated that, on August 24, 2013, he suffered a mild "ischemic" stroke, was hospitalized overnight, and was sent home with new medications. Cohen again stated he continues to work full time, eight hours per day, five days per week, but limits his business travel to day trips.

LSW filed an opposition to Cohen's motion for trial preference, arguing (1) the court should decide LSW's motion to dismiss and enforce the forum selection clause without regard to Cohen's trial preference motion, and (2) in any event, Cohen had not met the standard for trial preference under section 36, subdivision (a).

D. The Trial Court's Rulings and Appellate Proceedings

On September 11, 2013, the court heard oral argument on LSW's motion to dismiss or stay, and on Cohen's motion for trial preference. At the hearing, Cohen's counsel argued the court should not enforce the forum selection clause because the MOA was illusory, a Texas court would not protect the public policies underlying Cohen's statutory claims for failure to pay commissions, Texas would not give Cohen the trial

preference he would receive under California law, and Cohen could not travel to Texas due to his health condition. Counsel for EBS stated that EBS had not joined in LSW's motion, because EBS was not a party to the contract between Cohen and LSW. Counsel for EBS stated, however, that if the court were to grant LSW's motion to dismiss, "EBS would move for a transfer/consolidation of the proceedings in Texas." The court took the matter under submission.

On October 16, 2013, the court issued a written order (entitled "ruling after hearing") granting LSW's motion to dismiss. The court concluded the forum selection clause in the parties' agreement was "mandatory," and, under governing case law, the court was to enforce it "without engaging in a convenience analysis." The court stated that, in light of its ruling granting LSW's motion to dismiss, Cohen's request for trial preference was moot. Although EBS's demurrer had been set for hearing on September 11, 2013 along with the parties' other motions, the court did not hear the demurrer on that date, and did not address the demurrer (or Cohen's claims against EBS) in its October 16, 2013 order.

On November 26, 2013, Cohen filed a petition for writ relief (No. A140344). This court denied the petition on December 6, 2013. In its order denying the petition, this court stated: "The denial is without prejudice with respect to the trial preference issue. The court would consider a new petition on that issue should the respondent superior court overrule the pending demurrer [i.e., EBS's demurrer] and then reject a renewed request for trial preference."

On December 12, 2013, following the denial of his writ petition, Cohen filed a notice of appeal challenging the trial court's October 16, 2013 order and initiating the present appeal (No. A140803).

Also in December 2013, the trial court set a hearing and invited letter briefing on the question whether, in light of the court's dismissal of the action as to LSW, any claim against EBS remained to be tried in California. After Cohen and EBS filed letter briefs, and after the court heard argument in January 2014, the court issued an order of dismissal (entitled "ruling dismissing entire action") on February 24, 2014. In its order, the court,

relying on section 410.30, dismissed the action without prejudice as to EBS. The court stated: "EBS may well be a proper participant in any Texas action connected to this litigation and, in the interests of overall judicial economy, all claims connect[ed] herewith ought to be tried in the Lone Star State. Accordingly, this action is dismissed in its entirety, without prejudice subject to the outcome there."

On April 2, 2014, this court granted Cohen's motion for leave to file an amended notice of appeal in the present appeal (No. A140803). Cohen timely filed his amended notice of appeal, which states he is challenging both the trial court's October 16, 2013 order ("ruling after hearing") and the court's February 24, 2014 order ("ruling dismissing entire action").[3]

II. DISCUSSION

A. LSW's Motion to Dismiss Based on the Forum Selection Clause

1. Legal Standards

"California favors contractual forum selection clauses so long as they are entered into freely and voluntarily, and their enforcement would not be unreasonable. [Citation.] This favorable treatment is attributed to our law's devotion to the concept of one's free right to contract, and flows from the important practical effect such contractual rights have on commerce generally." (*America Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 11 (*America Online*).) A mandatory forum selection clause such as the one in the MOA will generally be given effect unless enforcement would be unreasonable or unfair. (*Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 147 (*Verdugo*).) " 'Mere inconvenience or additional expense is not the test of unreasonableness . . .' " of a mandatory forum selection clause. (*Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d 491, 496.) Such a clause "is reasonable if it has a logical connection with at least one of the parties or their transaction."[4] (*Verdugo, supra,* at p. 147.)

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[3] An order granting a motion to dismiss an action on the ground of inconvenient forum is appealable. (§ 904.1, subd. (a)(3).)

[4] A forum selection clause is *mandatory* if it requires the parties to litigate disputes exclusively in the chosen forum; a clause is *permissive* if it merely requires the parties to

Nonetheless, "California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates our state's public policy." (*America Online, supra,* 90 Cal.App.4th at p. 12; see *Intershop Communications AG v. Superior Court* (2002) 104 Cal.App.4th 191, 200 (*Intershop*) ["a forum selection clause will not be enforced if to do so would bring about a result contrary to the public policy of this state"].)

The party opposing enforcement of a forum selection clause ordinarily "bears the 'substantial' burden of proving why it should *not* be enforced." (*Global Packaging, Inc. v. Superior Court* (2011) 196 Cal.App.4th 1623, 1633.) But that burden is reversed "when the claims at issue are based on unwaivable rights created by California statutes. In that situation, the party seeking to enforce the forum selection clause bears the burden to show litigating the claims in the contractually-designated forum 'will not diminish in any way the substantive rights afforded . . . under California law.' " (*Verdugo, supra,* 237 Cal.App.4th at p. 147; accord, *Wimsatt v. Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1522 (*Wimsatt*); *America Online, supra,* 90 Cal.App.4th at p. 10.)

The case authority is divided as to the standard of review applicable when an appellate court reviews a trial court's decision to enforce a forum selection clause. At

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submit to jurisdiction in the chosen forum. (*Verdugo, supra,* 237 Cal.App.4th at p. 147, fn. 2.) A permissive forum selection clause is one factor to be considered as part of the traditional forum non conveniens analysis, which examines whether the designated forum is a suitable alternative forum and whether the balancing of private and public interest factors favors retaining the action in California. (*Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 471–474.) When a mandatory forum selection clause exists, courts do not consider these traditional forum non conveniens factors. (*Verdugo, supra,* at p. 147, fn. 2.)

Here, as noted, the forum selection clause in the MOA states that "*any* action at law or in equity hereunder *shall* be brought in Dallas County, Texas" (italics added), and the trial court concluded the clause is mandatory. Cohen does not challenge that conclusion on appeal; indeed, in his opening appellate brief, he refers to the clause as a "mandatory" one. In any event, the trial court was correct in holding the clause is mandatory, as it expressly designates an exclusive and mandatory location for litigation. (See, e.g., *Olinick v. BMG Entertainment* (2006) 138 Cal.App.4th 1286, 1294.)

least two appellate courts have applied a substantial evidence standard of review. (See, e.g., *CQL Original Products, Inc. v. National Hockey League Players' Assn.* (1995) 39 Cal.App.4th 1347, 1354; *Cal–State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1680.) The majority of courts, however, have applied the abuse of discretion standard. (See, e.g., *Verdugo, supra,* 237 Cal.App.4th at p. 148; *Schlessinger v. Holland America* (2004) 120 Cal.App.4th 552, 557; *America Online, supra,* 90 Cal.App.4th at pp. 7–9; *Bancomer, S.A. v. Superior Court* (1996) 44 Cal.App.4th 1450, 1457.) We apply the standard adopted by the majority and review the trial court's decision in this case for an abuse of discretion (although we would reach the same disposition if we reviewed the decision for substantial evidence). We conclude the trial court did not abuse its discretion by enforcing the Texas forum selection clause in the parties' agreement, and we reject Cohen's challenges to the court's decision.

2. Cohen's Statutory Claims for Failure to Pay Commissions

Cohen argues the court erred because the statutes on which he bases his third and fourth causes of action for "willful failure to pay commissions"—Labor Code section 2751 and Civil Code section 1738.15—reflect important California public policies and protections for California-based employees and independent contractors, and a Texas court would not enforce those protections. He also argues LSW and EBS did not demonstrate that Texas has comparable statutory protections.

As noted, the party opposing enforcement of a mandatory forum selection clause ordinarily bears the burden to show it should not be enforced; however, "when the claims at issue are based on unwaivable rights created by California statutes," the burden is reversed, and the party seeking to enforce the clause must show that litigating the claims in the contractually chosen forum " 'will not diminish in any way the substantive rights afforded . . . under California law.' " (*Verdugo, supra,* 237 Cal.App.4th at p. 147.) California appellate courts have shifted the burden in this manner where the claims at issue were based on the plaintiff's statutory rights, the governing statutory schemes provided strong remedies to encourage enforcement of those rights, and the Legislature had declared the rights unwaivable through express antiwaiver provisions. (See *id.* at

pp. 150, 156 [employee asserted wage-and-hour claims against employer based on specified Labor Code provisions (i.e., Lab. Code, §§ 200-204, 226, 226.7, 227.3, 1194) that are made unwaivable by Lab. Code, §§ 219 and 1194]; *America Online*, *supra*, 90 Cal.App.4th at pp. 10-11 [consumers asserted claim under Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.) (CLRA), which includes a provision prohibiting the waiver of its protections (Civ. Code, § 1751)]; *Wimsatt, supra*, 32 Cal.App.4th at pp. 1520–1522 [franchisees sued franchisor under California's Franchise Investment Law (Corp. Code, § 31000 et seq.) (FIL), which includes "an antiwaiver statute" voiding any provision in a franchise agreement that purports to waive any of the other protections afforded by the FIL (Corp. Code, § 31512)].) In these circumstances, enforcement of a forum selection clause (especially when it is accompanied by a choice of law provision requiring application of the laws of the designated forum rather than California law) would operate as a prohibited waiver of the California statutory rights at issue. (See *Verdugo, supra*, 237 Cal.App.4th at pp. 155–157.)

We conclude that Cohen's two alternative statutory claims for "willful failure to pay commissions" to an employee or to an independent contractor (the third and fourth causes of action, which cite Lab. Code, § 2751 and Civ. Code, § 1738.15, respectively) provide no basis for shifting to LSW the burden as to the enforceability of the forum selection clause.[5] These claims differ in important ways from the claims at issue in the cases cited above.

Cohen's cause of action alleging willful failure to pay commissions to an employee in violation of Labor Code section 2751 is not a claim based on Cohen's unwaivable statutory rights. Labor Code section 2751 provides that commission contracts between an "employer" and an "employee" must be in writing and must "set forth the method by which the commissions shall be computed and paid." (Lab. Code,

[5] Cohen does not contend on appeal that the other statutory claim in his complaint (his cause of action for age discrimination in violation of Gov. Code, § 12940) provides a basis for denying enforcement of the forum selection clause, so we do not consider any such question.

§ 2751, subd. (a).) The employer must give a signed copy of the contract to the employee and obtain a signed receipt.[6] (Lab. Code, § 2751, subd. (b).) We note initially that it is not clear whether this statute confers any rights on Cohen, as the MOA specifies he is not an employee of LSW. Moreover, the agreement governing the parties' relationship (the MOA) is in writing, is signed by both parties, and addresses how Cohen's compensation will be computed and paid. Finally, the current version of Labor Code section 2751 took effect on January 1, 2013, after much (although not all) of the conduct alleged in the complaint (filed in April 2013) had occurred.[7] (Stats. 2011, ch. 556, §§ 1–2, No. 9 West's Cal. Legis. Service, pp. 5178–5179; Stats. 2012, ch. 826, § 1, No. 13 West's Cal. Legis. Service, p. 6535.)

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[6] Labor Code section 2751 states in part: "(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid. [¶] (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. . . ."

[7] A prior version of Labor Code section 2751, enacted in 1963, provided that any employer "who has no permanent and fixed place of business in" California must put commission contracts in writing. (Lab. Code, former § 2751, added by Stats. 1963, ch. 1088, § 1, p. 2549.) An accompanying statute, former section 2752 of the Labor Code, stated: "Any employer who does not employ an employee pursuant to a written contract as required by Section 2751 shall be liable to the employee in a civil action for triple damages." (Lab. Code, former § 2752, added by Stats. 1963, ch. 1088, § 2, p. 2549, repealed by Stats. 2011, ch. 556, § 3, No. 9 West's Cal. Legis. Service, p. 5179.)

In 1999, a federal district court held these statutes violated the commerce and equal protection clauses of the United States Constitution, because they imposed the written contract requirement and triple damages liability only on employers without a fixed place of business in California. (*Lett v. Paymentech, Inc.* (N.D.Cal. 1999) 81 F.Supp.2d 992, 993, 1002 (*Lett*).) In 2011, in light of the holding in *Lett*, the Legislature amended Labor Code section 2751 to specify that, effective January 1, 2013, the written commission contract requirement applies to all employers. (Stats. 2011, ch. 556, §§ 1–2, No. 9 West's Cal. Legis. Service, pp. 5178–5179.) The intent of the Legislature, as stated in the enacting legislation, was "to restore the employee protections that had been in effect prior to" the *Lett* decision by making the statute applicable to all employers. (Stats. 2011, ch. 556, § 1, No. 9 West's Cal. Legis. Service, p. 5178.)

In support of his claim that Labor Code section 2751 applies here, Cohen alleges in his complaint that (1) notwithstanding the language of the MOA, he is in fact an employee of LSW, and (2) although he signed the MOA, he did not sign some of the revised commission schedules subsequently adopted by LSW. (It is not clear from the complaint whether the commission schedules that Cohen did not sign were issued after the revived Lab. Code, § 2751 took effect on January 1, 2013.)

These allegations do not persuade us that the citation of Labor Code section 2751 in Cohen's complaint provides a basis for shifting to LSW the burden as to the enforceability of the forum selection clause. The complaint does not make clear how LSW's failure to obtain Cohen's signature on revised commission schedules (even assuming that failure violated Lab. Code, § 2751) constituted or led to a "willful failure [by LSW] to pay commissions," or otherwise caused harm to Cohen. And Labor Code section 2751 does not specify a remedy for a violation of its requirement that a commission contract be signed (and that an employee sign a receipt for the contract), in contrast to the remedial provisions included in the statutory schemes at issue in *Verdugo, America Online* and *Wimsatt*. (See *Verdugo, supra,* 237 Cal.App.4th at pp. 156–157 [Labor Code remedies for nonpayment of wages and failure to provide meal and rest breaks to employees include statutory penalties, interest, and attorney fees, in addition to all unpaid compensation]; *America Online, supra,* 90 Cal.App.4th at p. 11 [noting remedial provisions under FIL and CLRA].) Indeed, when the Legislature amended Labor Code section 2751 in 2011 to apply the written commission contract requirement to all employers, it repealed Labor Code former section 2752, which previously provided for the recovery of triple damages for a violation of Labor Code section 2751. (Stats. 2011, ch. 556, § 3, No. 9 West's Cal. Legis. Service, p. 5179.) Finally, in contrast to the statutory schemes discussed in *Verdugo, America Online* and *Wimsatt,* Labor Code section 2751 does not expressly state that the requirement of a written commission contract (or the requirement of a signed receipt for such a contract) is unwaivable. (Lab. Code, § 2751; see *Verdugo, supra,* 237 Cal.App.4th at pp. 150, 156; *America Online, supra,* 90 Cal.App.4th at pp. 10–11; *Wimsatt, supra,* 32 Cal.App.4th at pp. 1520–1522.)

In his other statutory cause of action for "willful failure to pay commissions" (the fourth cause of action in the complaint), Cohen alleges that, if he is determined *not* to be an employee of LSW, he is instead an "independent sales representative" and is entitled to relief under Civil Code section 1738.10 et seq. We conclude this claim also provides no basis for shifting to LSW the burden as to the enforceability of the forum selection clause in the MOA.

The statutory scheme on which Cohen relies, the Independent Wholesale Sales Representatives Contractual Relations Act of 1990 (Civ. Code, § 1738.10 et seq.) (the act), specifies requirements applicable to a commission contract between a "wholesale sales representative" on the one hand, and a "manufacturer, jobber, or distributor" on the other. (Civ. Code, § 1738.13.) Where it applies, the act does have similarities to the statutory schemes discussed in *Verdugo*, *America Online* and *Wimsatt*: it imposes specific contracting and payment requirements on manufacturers and others subject to the act (Civ. Code, § 1738.13, subds. (b), (d)); it specifies remedies (including treble damages and attorney fees) for a willful failure to enter a written commission contract as required by the act or a willful failure to pay commissions as provided in the written contract (Civ. Code, §§ 1738.15–1738.16); and it provides that any contractual provision waiving any rights established by the act is contrary to public policy and void (Civ. Code, § 1738.13, subd. (e)).

But the act does not apply to all persons who are involved in sales and are paid by commission; instead, it applies to a "wholesale sales representative" who provides services to a "manufacturer," "jobber" or "distributor." (Civ. Code, § 1738.13, subd. (a).) The act defines "wholesale sales representative" as "any person who contracts with a manufacturer, jobber, or distributor for the purpose of soliciting wholesale orders, is compensated, in whole or part, by commission, but shall not include one who places orders or purchases exclusively for his own account for resale and shall not include one who sells or takes orders for the direct sale of products to the ultimate consumer." (Civ. Code, § 1738.12, subd. (e).) Under this definition, "clearly not all salespeople are sheltered by the Act. The Legislature intended to safeguard only nonemployee 'middle-

men' sales representatives dealing with wholesale goods." (*Reilly v. Inquest Technology, Inc.* (2013) 218 Cal.App.4th 536, 546 (*Reilly*).) " 'Wholesale' means 'the sale of commodities in quantity usually for resale (as by a retail merchant).' " (*Id.* at p. 547.)

Here, nothing in the complaint, the MOA or the other evidence the parties submitted to the trial court supports a conclusion that Cohen is a "wholesale sales representative" involved in "sell[ing] commodities in a quantity appropriate for resale by a retail store or other large scale middleman buyer." (*Reilly, supra*, 218 Cal.App.4th at p. 547.) Cohen is an insurance agent. The MOA (in sections 2.2 and 2.3) authorizes him to solicit, both personally and through other agents assigned to him, individual applications (i.e., from ultimate consumers) for LSW insurance policies, and to recruit and recommend the appointment of other agents. Cohen alleges in the complaint that his role was "marketing recruiting," which included "recruiting, training, and providing product support to, insurance agents and agencies in California." He does not allege he sells commodities in large quantities to others who will resell them.

For the foregoing reasons, Cohen has not made a threshold showing that the commission claims in his complaint are based on statutes that apply to him and confer on him unwaivable statutory rights. Accordingly, we conclude that Cohen's inclusion of these claims in his complaint did not (1) shift to LSW the burden as to the enforceability of the forum selection clause in the parties' agreement, or (2) meet Cohen's burden to show the clause is unreasonable and should not be enforced. And to the extent Cohen argues generally that California law *may* be more favorable to him than Texas law on other issues (such as the question of whether he is an employee of LSW or an independent contractor), such potential differences in the laws of the two competing forums provide no basis for denying enforcement of the Texas forum selection clause. (*CQL Original Products, Inc. v. National Hockey League Players' Assn., supra,* 39 Cal.App.4th at p. 1357.) In the absence of a statute prohibiting the parties from choosing

Texas as a forum and thus potentially waiving the application of California law,[8] "there exist 'no compelling policy reasons for denying enforcement of the forum selection clause . . . .' " (*Ibid.*)

3. The Reasonable Basis for the Choice of a Texas Forum

As noted, a forum selection clause is reasonable if it has "a logical connection with at least one of the parties or their transaction." (*Verdugo, supra,* 237 Cal.App.4th at p. 147.) The Texas forum selection clause in the MOA entered into by Cohen and LSW meets this standard, and Cohen has made no showing to the contrary. LSW is a Texas corporation with its principal place of business in Addison, Texas. LSW contracts with Marketing Organizations such as Cohen in many jurisdictions across the United States. In its agreements with these Marketing Organizations, LSW typically includes a Texas forum selection clause, in part to protect itself from having to litigate in multiple forums under different state laws. This evidence establishes a reasonable basis for the choice of Texas as a forum. (*CQL Original Products, Inc. v. National Hockey League Players' Assn., supra,* 39 Cal.App.4th at p. 1355.) Moreover, Cohen is a licensed insurance agent in both California and Texas (although he states he has never sold an insurance policy in Texas).

4. Alleged Illusoriness of the MOA

Cohen argues enforcement of the forum selection clause in the MOA would be unreasonable because the MOA is an illusory contract. Cohen cites *Peleg v. Neiman Marcus Group, Inc.* (2012) 204 Cal.App.4th 1425, 1432–1433, 1435–1436, 1467 (*Peleg*), in which the Second District Court of Appeal held an arbitration agreement between an employer and its employees was illusory under Texas law (which the court applied pursuant to a choice of law provision in the agreement) because the agreement permitted the employer to modify or revoke the agreement on 30 days' notice.

[8] As LSW notes, Cohen may urge the Texas courts not to enforce the Texas choice of law provision in the MOA (at all or as to certain issues), and instead to apply California law. (See *DeSantis v. Wackenhut Corp.* (Tex. 1990) 793 S.W.2d 670, 677–678 [establishing test for determining whether to enforce choice-of-law clause].)

Peleg does not assist Cohen. In *Peleg*, the parties' agreement as to the forum for resolution of disputes was "a stand-alone agreement that addresse[d] only one subject: arbitration." (*Peleg, supra*, 204 Cal.App.4th at p. 1436.) The appellate court determined that agreement was illusory because it allowed the employer to modify or revoke it, and thus to avoid (or change the terms of) arbitration. (*Id.* at pp. 1433, 1458–1459.) Here, in contrast, the Texas forum selection clause is one provision in the MOA (an agreement that also addresses other aspects of the parties' relationship, including the scope of Cohen's authority and his compensation), and Cohen makes no claim that the forum selection clause itself is illusory. Nor would such a claim have merit. In contrast to the arbitration agreement in *Peleg*, the MOA does not authorize LSW to modify the forum selection clause unilaterally. To the contrary, as noted, section 6.1 of the MOA specifies that, with the exception of modifications to the schedules of compensation, "[n]o modification of any provision" of the MOA "shall be effective unless endorsed in a writing signed by" both Cohen and the President or a Vice President of LSW.

Instead of arguing the forum selection clause itself is illusory, Cohen contends on appeal (as he does in his complaint) that other provisions in the MOA (those giving LSW discretion to assign or terminate the assignment of an agent to Cohen, and to modify the commission schedules) render the MOA illusory. This claim, like Cohen's other claims about the MOA as a whole and about the parties' contractual relationship, is covered by the contract's forum selection clause, which specifies that "any action at law or in equity hereunder shall be brought in" Texas. (See *Olinick v. BMG Entertainment, supra,* 138 Cal.App.4th at pp. 1300–1301 [clause designating New York forum for " '*all disputes arising under this Agreement*' " encompassed " '*all causes of action arising from or related to [the] [A]greement, regardless of how they are characterized*' "]; *Cal-State Business Products & Services, Inc. v. Ricoh, supra,* 12 Cal.App.4th at pp. 1676–1677 [clauses designating a New York forum for " 'any case or controversy arising under or in connection with the Agreement[s]' " encompassed claims about alleged false promises made during the negotiations that culminated in the contracts, and about the parties' subsequent conduct of the relationship created by the contracts].) Cohen in effect is

seeking to have California courts determine the question of the illusoriness of other provisions of the MOA (or of the MOA as a whole) at the forum non conveniens stage, a result that would usurp the role assigned to the Texas courts by the MOA. Cohen's illusoriness argument provides no basis for denying enforcement of the forum selection clause in the parties' agreement.

5. Alleged Adhesiveness and Unconscionability of the MOA

Cohen contends the MOA is a contract of adhesion and is unconscionable. But he does not develop this argument. He just asserts that, upon review of the complaint and the MOA, "one readily observes" that the parties did not have equal bargaining power, that the contract is unfair, and that the purpose of the forum selection clause was to discourage claims. We need not address this undeveloped argument. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived."]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court "will not develop the appellants' arguments for them"].) Moreover, even assuming the MOA is a contract of adhesion, that would not defeat enforcement of the forum selection clause. Cohen has not disputed that he signed the MOA freely and voluntarily and had the power to walk away from negotiations if he was displeased with the clause. (See *Cal-State Business Products & Services, Inc. v. Ricoh, supra,* 12 Cal.App.4th at pp. 1679–1681.) And the fact that LSW prefers to litigate all its contractual disputes in Texas is not irrational and is not outside the reasonable expectations of Cohen. (*Id.* at p. 1681.) To the extent Cohen wishes to contend other provisions of the MOA are unconscionable or unenforceable, he may present such arguments to the Texas courts.

6. Convenience of the Parties

Cohen contends the trial court should not have enforced the Texas forum selection clause because he lives and works in California, most of the witnesses he would call at trial live and work in California, and his age and his health issues (including those highlighted in his motion for trial preference under § 36, subd. (a)) would make it

difficult for him to litigate in Texas. But as noted, when a mandatory forum selection clause exists, courts do not consider the traditional forum non conveniens factors, such as whether litigating in California would be more convenient for the parties and witnesses. (*Smith, Valentino & Smith, Inc. v. Superior Court*, *supra*, 17 Cal.3d at p. 496; *Verdugo*, *supra,* 237 Cal.App.4th at p. 147, fn. 2.) And, even to the extent Cohen's health might be a relevant consideration in determining the reasonableness of the forum selected by the parties, the trial court could consider the evidence that, while Cohen has had health difficulties, he continues to work full time, eight hours per day, five days per week. The court did not abuse its discretion.

7. Cohen's Motion for Trial Preference

Finally, we reject Cohen's suggestion that his motion for trial preference under section 36, subdivision (a) provides a basis for denying enforcement of the Texas forum selection clause in the parties' agreement, or for reversing the trial court's orders. Since Cohen and LSW agreed to litigate in Texas (and since, as we discuss below, Cohen has not shown the trial court erred in determining Cohen's claims against EBS should also proceed in Texas), any preference to which Cohen might have been entitled if California had been the proper forum for his claims is not relevant. (See *Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th 1399, 1403, 1409–1410 [trial court's decision to grant the plaintiff trial preference under § 36 had "no relevance" to whether to grant the defendants' petition to compel arbitration].)

B. Dismissal of the Action as to EBS

As noted, after granting LSW's motion to dismiss, the trial court issued a separate order dismissing Cohen's related claims against EBS without prejudice, ruling that, in the interests of judicial economy, the entire action should proceed in Texas. Cohen has appealed both orders. But he does not argue that the court, having dismissed his claims against LSW, should nevertheless have retained his claims against EBS for separate adjudication in California. Cohen suggests no basis for finding the court abused its discretion in deciding Cohen's related claims against the two defendants should proceed together in Texas. We affirm the court's ruling dismissing Cohen's claims against EBS.

III. DISPOSITION

The orders of dismissal are affirmed. LSW and EBS shall recover their costs on appeal.

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Streeter, J.

We concur:

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Reardon, Acting P.J.

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Rivera, J.